

## APPENDIX V. PERFORMANCE BOND.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and address of operator] \_\_\_\_\_

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] \_\_\_\_\_

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies): [name(s) and business address(es)] \_\_\_\_\_

### Scope of Coverage:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism. For pipelines, list the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

List the coverage guaranteed by the bond: containment and clean up of oil from a discharge arising from operating the aboveground storage tank and/or pipeline.]

Penal sums of bond:

Containment and Clean up (per discharge) \$ \_\_\_\_\_

Annual Aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under § [62.1-44.34:16](#) of the Code of Virginia and under [9VAC25-640](#) to provide financial assurance for containment and clean up necessitated by discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the type of coverage applicable to each tank or location or pipeline] arising from operating the aboveground storage tanks and/or pipelines identified above;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and clean up, in accordance with the State Water Control Board's instructions for containment and clean up of discharges of oil arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in [9VAC25-640](#), within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;
- (e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of [9VAC25-640](#).

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to contain and clean up in accordance with [9VAC25-91](#) and the State Water Control Board's instructions, the Surety(ies) shall either perform containment and clean up in accordance with [9VAC25-91](#) and the board's instructions, or pay funds in an amount up to the annual aggregate penal sum to the State Water Control Board as directed by the State Water Control Board under [9VAC25-640-180](#). The State Water Control Board in its sole discretion may elect to require the surety to pay the funds or to perform containment and cleanup up to the annual aggregate penal sum.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a discharge has occurred, the Surety(ies) shall pay funds in an amount not exceeding the annual aggregate penal sum to the State Water Control Board as directed by the State Water Control Board under [9VAC25-640-180](#).

The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to adjudicate any claim against it (them) by the State Water Control Board and waive any objection to venue in that court. Interest shall accrue at the judgment rate of interest on the amount due beginning seven days after the date of notification by the State Water Control Board. In the event the State Water Control Board shall institute legal action to compel performance by the Surety under this agreement, the Surety shall be liable for all costs and legal fees incurred by the board to enforce this agreement.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond. The Surety(ies) hereby agrees that it(they) has been notified of all material facts regarding this contract of suretyship and waiver(s) any defense founded in concealment of material facts. The Surety(ies) represents that the person executing this agreement has full authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or default of the Principal. The State Water Control Board may enforce this agreement against the Surety(ies) without bringing suit against the Principal. The State Water Control Board shall not be required to exhaust the assets of the Principal before demanding performance by the Surety. No lawful act of the State Water Control Board, including without limitation any extension of time to the Principal, shall serve to release any surety, whether or not that act may be construed to alter or vary this agreement. Release of one cosurety shall not act as the release of another. This agreement shall be construed to affect its purpose to provide remedial action for discharges of petroleum.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail or overnight courier to the Principal and the State Water Control Board, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the State Water Control Board, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of [9VAC25-640](#) as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_